

ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

RECEIVED

OCT 16 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policies and Rules Concerning)
Children's Television Programming)

MM Docket No. 93-48

Revision of Programming Policies)
for Television Broadcast Stations)

DOCKET FILE COPY ORIGINAL

COMMENTS OF

THE **WALT DISNEY** COMPANY.

Diane S. Killory
Joyce H. Jones
MORRISON & FOERSTER
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006-1888
(202) 887-1500

October 16, 1995

No. of Copies rec'd
L51A B C D E

45

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION AND SUMMARY | 1 |
| I. THE COMMISSION’S PROPOSED “SIGNIFICANT PURPOSE” DEFINITION IS APPROPRIATE AND SHOULD BE ADOPTED | 4 |
| II. THE COMMISSION SHOULD NOT DEFINE EDUCATIONAL AND INFORMATIONAL PROGRAMMING SO AS TO EXCLUDE SHORT SEGMENTS | 8 |
| III. THE COMMISSION SHOULD NOT REQUIRE EDUCATIONAL PROGRAMS TO BE SO IDENTIFIED ON THE AIR | 11 |
| CONCLUSION | 13 |

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED
OCT 16 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

| | | |
|-----------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Policies and Rules Concerning |) | |
| Children's Television Programming |) | MM Docket No. 93-48 |
| |) | |
| Revision of Programming Policies |) | |
| for Television Broadcast Stations |) | |

COMMENTS OF THE WALT DISNEY COMPANY

Pursuant to the Notice of Proposed Rulemaking ("NPRM") released by the Commission on April 7, 1995 in the above-captioned proceeding, The Walt Disney Company ("Disney") hereby submits these Comments.

INTRODUCTION AND SUMMARY

Disney submits these Comments as a producer of children's programming, including those specifically designed to meet the educational and informational needs of children in an entertaining manner. Disney is committed to continuing its production of such programming so long as the revenues generated from such programming are sufficient to address the necessary production and distribution costs and so long as FCC regulations permit these programs to have both a significant entertainment aspect and a significant educational purpose. To this end, Disney has participated extensively in the proceedings at the Commission since enactment of the Children's Television Act of 1990 including written comments in the various proceedings and testifying at the Commission's *en banc* hearing.

As the Commission ponders the issues raised in this proceeding, it should keep in mind the broader environment in which educational television programming exists. Specifically, that environment is replete with choices, both on and off the television screen, all of which vie for children's attention. As we pointed out in our earlier comments, children are adept at making choices among the competing alternatives, especially when it comes to using the remote control. Where television programs are concerned, children will quickly exit any program that does not capture and hold their attention. An educational program must therefore be entertaining to attract and hold a child's attention. Accordingly, the Commission will further the Congressional goal of nurturing children's educational and informational needs only if its regulatory scheme is carefully crafted to encourage the production and airing of programs that children will watch.

For this reason, Disney applauds the Commission for jettisoning its former proposal that education must be "*the primary purpose*" of educational programs and, instead, proposing that education be "*a significant purpose.*" It continues to be Disney's firm view that unless programs engage children in an entertaining manner as they educate them, children will not watch. It is no coincidence that the most successful educational programs are those for which it would be difficult to rank education as "*the primary purpose.*"

Disney urges the Commission to reconsider other components of its proposed definition of educational programming that are unduly limiting, however. Specifically, the Commission's proposals to exclude short segment programming and specials from its definition of core programming will reduce, if not eliminate, the incentive of broadcasters to air, and concomitantly of producers to create, these types of programs. Because these alternative forms of programs offer a unique contribution to the educational and

informational programming available to children, the Commission's proposals would undermine Congress' goal of increasing the amount of educational programming available to children. Certain lessons, for example, can be conveyed best in a short segment, but might become overbearing or pedantic if relegated to a 15 or 30-minute format. Anyone who can recall the impact of the anti-drug commercial depicting a man breaking an egg into a frying pan and watching it sizzle with the voice-over, "This is your brain. This is drugs. This is your brain on drugs. Any questions?," knows the unique educational value that such programming can have. In a short but unforgettable moment, a message was conveyed about the harms of drug abuse by the Partnership for a Drug-Free America. Similarly, an entire generation of young adults can recite words of the preamble to the Constitution by humming the tune to ABC's *Schoolhouse Rock* segment. Disney respectfully submits that the goals of the CTA would not be fully addressed if the Commission reduced broadcasters' incentive to air either short segment programming or specials by excluding them from the definition of educational children's programming.

Disney supports the Commission's recommendation that broadcasters identify educational programming as such, but disagrees with its proposal to require an on-air identification. As the Commission aptly recognizes, its goal here is to enable parents to identify educational programming so that they can encourage their children to watch it. Identifying educational programming in published materials, including program guides and other materials reasonably calculated to reach parents, will enable parents to do just this with little risk of unintended, adverse effects. By contrast, requiring an *on-air* identification attached to a particular program will serve no such benefit unless the parent is not only watching television but also watching the particular channel at the moment the identification

is aired. Large numbers of parents do not watch television with their children while their children are scanning channels in search of a program. Similarly, parents are unlikely to use “channel surfing” as the preferred mechanism for locating educational programs, particularly if the information is included in the local newspaper listing or TV guide. Thus, the likely benefit of an on-air identification is minimal at best. By contrast, the risks of an on-air identification are significant. Because many children often shy away from activities that are supposedly “good for them,” an on-air identification could actually *deter* children from watching educational programs. Simply stated, on-air identification heightens the risk of a child turning off an educational program. Given the lack of countervailing benefits, the Commission should exclude an on-air identification from any regulation it adopts.

I. THE COMMISSION’S PROPOSED “SIGNIFICANT PURPOSE” DEFINITION IS APPROPRIATE AND SHOULD BE ADOPTED

Studies continue to find positive benefits achieved by children who watch educational television programming.¹ A recent study performed by the Center for Research on the Influences of Television on Children at the University of Kansas found that pre-schoolers who watched educational programming, including such shows as *Sesame Street*, were both better prepared for school and performed better on verbal and math tests than would have been otherwise expected.² Implicit in this and other studies, however, is the

¹ See, e.g., Lawrie Mifflin, *Study Finds Educational TV Lends Preschoolers Even Greater Advantages*, N.Y. Times, May 31, 1995, at B8.

² *Id.* Chairman Hundt has also acknowledged the value of educational television in improving the learning skills in young children. *An Open Letter from FCC Chairman Reed Hundt*, Broadcasting & Cable, June 5, 1995, at 7.

basic premise that in order for educational programming to confer any benefit upon its intended viewers, it must be watched by those viewers.

The Commission has thus appropriately proposed to define programming that is “specifically designed to meet the educational and informational needs of children” as programming that “has education as a *significant purpose*.”³ In order to meet the “significant purpose” test, education need not be the only purpose of a program, or indeed the primary purpose, “but [it] must be more than an incidental goal.”⁴ The “significant purpose” test will permit broadcasters to air programs that are both educational and entertaining, without having to undertake the treacherous task of ranking the entertainment value of an educational program in relation to the program’s educational value.

In our earlier comments and *en banc* testimony in this proceeding, Disney explained at length why the Commission should adopt this definition, rather than “the primary purpose” definition initially contemplated.⁵ We do not repeat those arguments, but due to the important nature of the Commission’s decision regarding the definition, summarize them here.⁶ Briefly stated, as any parent is well aware, children cannot be forced to watch

³ *Policies and Rules Concerning Children’s Television Programming*, 10 FCC Rcd 6308 (1995)(“NPRM”) at 6327 (emphasis supplied).

⁴ *Id.* at 6328.

⁵ See e.g., Comments of the Walt Disney Company, MM Docket No. 93-48, at 9 (May 7, 1993) Reply Comments of the Walt Disney Company, MM Docket No. 93-48, at 9 (June 7, 1993); Testimony of The Walt Disney Company Presented by Kenneth D. Werner, Senior Vice President of Business Affairs, Walt Disney Television, and Bill Nye, creator and host, *Disney Presents: Bill Nye the Science Guy*, FCC *en banc* hearing, MM Docket No. 93-48 (June 28, 1994).

⁶ For the Commission’s convenience, we attach a copy of our earlier comments and reply comments on this issue (Attachments A and B).

educational programs if they do not find those programs interesting and entertaining.⁷ Children are a discerning audience and will not watch a program simply because it is on television. There simply are too many other entertaining choices, both on and off television.⁸ Accordingly, as recognized by the Commission, to achieve Congress' dual goal of increasing the amount of educational programming on television *and* having children watch and learn from that programming,⁹ producers must be encouraged "to make educational programming that is attractive to children."¹⁰ Producers, of course, can only do so if broadcasters are willing to air such programming, *viz.*, if there is a market for such programs. The Commission's proposed "significant purpose" definition is an appropriate first step to achieving this goal.

Disney has been and remains committed to producing high quality educational children's programming. In addition to Disney's existing educational children's programs such as *Disney Presents: Bill Nye The Science Guy* and *Adventures in Wonderland*, Disney has recently launched into syndication another educational children's program, *Sing Me a Story with Belle*. The *Belle* series is based upon the character of the same name from the successful Disney animated movie *Beauty and the Beast* and expounds upon Belle's love of

⁷ Disney uses the shorthand term "educational" to refer to both "educational and informational" programming, as provided in the CTA. We assume that the Commission has done likewise, for certainly, there would be no basis for excluding informational programming.

⁸ David Tobenkin, *New Blocks Put Squeeze on Kids Syndication*, Broadcasting & Cable, July 24, 1995, at 38. In fact, some industry observers attribute the steady decline in overall ratings for children's television programs to the ever-increasing number of entertainment choices available to children such as cable channels, VCRs, computers and video games. *Id.*

⁹ See e.g., S. Rep. No. 227, 101 Cong., 1st Sess. 5 (1989) ("Moreover, there is a great deal of evidence that television can teach children effectively.").

¹⁰ NPRM at 6328.

reading by leading the viewer through one or two different stories in each episode. Each story has an underlying moral or educational lesson, which is explained by Belle and discussed with the other characters on the show. While education is unquestionably “a significant purpose” of *Belle*, in the time-honored Disney style, *Belle* is also a highly entertaining series -- *i.e.*, a program that will engage children (in this case, young children) so that they will watch.

Disney’s award-winning *Bill Nye* program provides an excellent example of a program that was specifically designed to educate children, but to do so in a highly entertaining way. Through the use of MTV-type music videos with scientific lyrics, as well as unusual graphics, special effects and comedy, *Bill Nye* teaches children fairly sophisticated scientific concepts in a manner that is engaging and entertaining, as well as understandable. Indeed, Bill Nye testified at the Commission’s *en banc* hearing on June 28, 1993 that despite its educational purpose the show is primarily -- not secondarily -- entertaining. As he explained:

It all starts with the show. If a program is not entertaining and enjoyable to children, they won’t watch.

The challenge is to convey information in a fashion that will capture a child’s attention and imagination. . . .

Our goal with *Disney Presents: Bill Nye the Science Guy* is to present scientific information in a manner that will engage children and capture their attention. To do so, we must engage their minds in a fun, exciting, enjoyable, and *entertaining* way.¹¹

¹¹ Testimony of The Walt Disney Company Presented by Kenneth D. Werner, Senior Vice President of Business Affairs, Walt Disney Television, and Bill Nye, creator and host, *Disney Presents: Bill Nye the Science Guy*, FCC *en banc* hearing, MM Docket No. 93-48 (June 28, 1994).

Under the proposed “significant purpose” definition, broadcasters will be able to feel comfortable in their judgment that programs such as *Bill Nye* qualify as educational programs.¹² As explained in our earlier comments and testimony to the Commission, if broadcasters are unable to feel comfortable in these judgments, *e.g.*, if they are required to determine that the entertainment value of a program is secondary to the educational value, the resulting programs on the air might well be pedantic and droning. While those programs would clearly be educational under the Commission’s definition and, therefore, ensure the broadcaster that its programming will “count” toward the educational requirement, they would be so dull that no children would watch, thereby -- however, unwittingly -- frustrating the very purpose of the CTA.

Disney thus strongly recommends that the Commission adopt the portion of its proposed definition of core programming that permits broadcasters to air programs with “a significant,” rather than “a primary” educational purpose.

II. THE COMMISSION SHOULD NOT DEFINE EDUCATIONAL AND INFORMATIONAL PROGRAMMING SO AS TO EXCLUDE SHORT SEGMENTS

The Commission also proposes to define core educational programming so as to require that such programming be of “substantial length (*e.g.*, 15 or 30 minutes).”¹³ Such a

¹² Obviously, the educational goal of programs will vary -- indeed, should vary -- depending on the target audience. Thus, while *Bill Nye* attempts to educate children fourth grade and above about such concepts as gravity, the environment and light refraction, programs like *Barney* attempt to educate pre-schoolers about such concepts as sharing, different types of family structures and different kinds of animals.

¹³ NPRM at 6327, 6330.

definition would, in Disney's view, be unfortunate and antithetical to the goal of the CTA.¹⁴

While 15 and 30-minute educational programs certainly have educational and informational value, so do segments of shorter duration. Indeed, short segments can sometimes convey educational information in ways that longer segments cannot. Short segments that are specifically designed to serve children's educational and informational needs should therefore count toward a broadcaster's overall effort to air educational programming. Accordingly, Disney urges the Commission to reconsider its proposed definition.

A long-standing example of valuable short segment educational programming is the *Schoolhouse Rock* series aired by ABC during its Saturday morning television line-up. In animated, three-minute segments such topics as multiplication tables (*Zero is My Hero*), grammar (*Conjunction Junction*), history (*Preamble to the Constitution*), and science (*Electricity*) were set to music. For more than a decade, these short segments were aired seven times throughout the Saturday morning line-up.¹⁵ Today, a generation of young adults know the words of the preamble to the Constitution and the use of conjunctions, among a myriad of other things, because they still remember the music to which these lessons were set.¹⁶ In fact, in response to the urging of its viewers, ABC recently brought the

¹⁴ Similarly, Disney is concerned that the Commission's proposal to "count" only regularly scheduled programs could undermine the goal of the CTA to encourage educational and informational programming. Like short segments, specials can contribute significantly to the educational programming available to children. Accordingly, the Commission should encourage their airing by considering them toward a broadcaster's overall effort to air educational and informational programming. Indeed, the Commission's proposal to require broadcasters to identify educational programs in program guides argues in favor of counting specials, because the identification will make it easier for parents to find these educational specials.

¹⁵ Sally Streff Buzbee, *For Generation X, Remember "Conjunction Junction?"* Associated Press, July 17, 1995, at 2. The segments aired from 1973 to 1985.

¹⁶ *Id.*

Schoolhouse Rock series back to its Saturday morning schedule and has ordered new segments.¹⁷ Clearly, educational short segments can educate.¹⁸

Many of these lessons would not work as longer segments. Consider, for example, the anti-drug lesson imparted by the voice-over of the memorable expression, “This is your brain. This is drugs. This is your brain on drugs. Any questions?” while the viewer sees a man dropping an egg into a frying pan in which the egg immediately begins to sizzle. The lesson of this short informational segment was unmistakably clear. In the intervening years since this segment was first aired, there have been a vast number of “substantial length” programs aimed at informing children about the evils of drugs and encouraging them to “stay clean.” It is questionable, however, whether any of these programs conveyed an anti-drug message to children as clearly, succinctly and as unforgettably as the “fried egg” PSA.

Similarly, the Department of Agriculture, frustrated by the limitations of traditional methods of teaching children about nutrition, recently turned to short segments as a way to inform children about nutrition. The USDA approached Disney to produce an effective way to teach children about the benefits of healthy eating. Disney and the USDA ultimately developed a series of four public service announcements for television, starring Timon and Pumbaa, from Disney’s animated movie *The Lion King*, that educate children about good nutritional habits.¹⁹ For the Commission’s convenience, Disney has attached videotape with

¹⁷ *Id.*

¹⁸ Short segments have successfully captured children’s attention. In the 1994-95 season, *Schoolhouse Rock* had the second highest rating among educational children’s television programs as rated by children aged 2 to 11.

¹⁹ Three of these PSAs have been completed.

these nutritionally themed PSAs so that the Commission can see for itself the educational and informational effectiveness of this format.

Clearly, short segments have a unique value in educating children. In order to encourage rather than discourage broadcasters from airing them, the Commission should consider them in evaluating a broadcaster's overall effort to air educational and informational programming.

III. THE COMMISSION SHOULD NOT REQUIRE EDUCATIONAL PROGRAMS TO BE SO IDENTIFIED ON THE AIR

The Commission has appropriately concluded that it does not want to be in the business of evaluating the quality of children's programming if the public has sufficient opportunity to do so.²⁰ To this end, the Commission has proposed requiring certain types of information to be made available to the public concerning educational children's programming. Specifically, the Commission has proposed requiring that broadcasters provide instructions for listing programs as educational to program guide publishers and, in addition, that educational programs be identified at the time they are aired.²¹

Disney agrees with the former, but urges the Commission to reconsider the latter. The Commission aptly observes that if parents are informed in advance that a particular program aired will have an educational and informational focus, they will have the opportunity to encourage their children to watch such a program.²² This informational goal

²⁰ NPRM at 6321.

²¹ *Id.* at 6327.

²² *Id.* at 6321.

is best accomplished by requiring broadcasters to provide identifying information to program guide publishers, local newspapers and any other publishers of material reasonably calculated to provide this type of information to parents. By reviewing such materials in advance, parents will have the opportunity to arrange for their children to watch those educational and informational programs.

By contrast, however, an *on-air* identification attached to the program, either through words or an icon, will not typically accomplish the desired informational objective of the Commission. Even if parents were watching television with their children when they are “channel surfing” -- a dubious proposition -- the on-air identification would not serve its purpose unless they tune to that channel at precisely the moment that the words or icon identifying the educational program are flashed on the television screen. The benefit from such an announcement, therefore, is unlikely. Only the children watching the program will be informed that the program they are tuned to is an educational program. As a result, an on-air identification may unwittingly *deter* children from watching quality educational shows, in the same way that kids shy away from other things that are labeled “good for them.” Labeling a program as educational may very well cause children to turn off otherwise entertaining (but educational) programs in favor of other, far less educational programming.²³

A broadcaster can air the highest quality children’s television programs available, but if children are not watching, Congress’ goal is left unmet. Accordingly, given that the risks

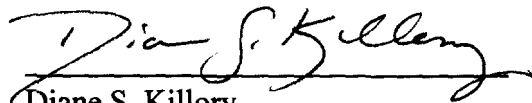
²³ Using an icon (as opposed to a more explicit label) to identify educational programming will not alleviate the problem. As a practical matter, children are far more likely to discern the meaning of the icon and change the channel before a parent is even able to determine what the icon means.

of an on-air announcement far outweigh the benefits, Disney urges the Commission not to require the use of an on-air identification attached to educational and informational programming. Rather, any such required announcements should be limited to materials readily available to parents, such as program guides.

CONCLUSION

For the reasons set forth above, Disney urges the Commission to (1) adopt the "significant purpose" component of the proposed definition of "core" educational programming, (2) eliminate those portions of the proposed definition that would exclude short segment programs and specials, and (3) limit any identification of educational programs to materials that are reasonably likely to reach parents, such as program guides.

Respectfully submitted,



Diane S. Killory
Joyce H. Jones
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Telephone: (202) 887-1500

Counsel for The Walt Disney Company

October 16, 1995

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

**Policies and Rules Concerning
Children's Television Programming**

**Revision of Programming Policies
for Television Broadcast Stations**

MM Docket No. 93-48

COMMENTS OF
THE WALT DISNEY COMPANY.



© Disney

**Diane S. Killory
Susan H. Crandall
MORRISON & FOERSTER
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006
(202) 887-1500**

May 7, 1993

TABLE OF CONTENTS

| | <u>Pages</u> |
|--|--------------|
| SUMMARY | ii |
| INTRODUCTION | 1 |
| I. ENTERTAINMENT IS A CRITICAL COMPONENT OF THE EDUCATIONAL PROCESS | 4 |
| II. THE COMMISSION'S PROPOSAL TO REQUIRE THAT THE PRIMARY PURPOSE OF PROGRAMMING BE EDUCATIONAL. WITH ANY ENTERTAINMENT VALUE PURELY SECONDARY. WILL DISSERVE THE PUBLIC INTEREST | 6 |
| A. The Commission's Proposal Will Frustrate The Purpose Of The Act By Unwittingly Encouraging Broadcasters To Air Programs That Children Will Not Watch | 7 |
| B. The Commission Can Further The Act's Purpose By Encouraging Programming That Is As Least As Entertaining As It Is Educational | 10 |
| III. THE COMMISSION SHOULD DEFER TO A BROADCASTER'S REASONABLE, GOOD FAITH JUDGMENT THAT A SIGNIFICANT PURPOSE OF A PROGRAM IS EDUCATIONAL | 11 |
| CONCLUSION | 13 |

SUMMARY

Bo may know baseball, but The Walt Disney Company knows children. Disney, after all, has been producing movies and television programs for children for more than a half century. The fundamental tenet Disney has learned over the years -- and the tenet that underlies all Disney productions -- is that children will watch quality programs that are entertaining. Children are, in fact, a discerning audience.

Just as children are more likely to watch what is entertaining, they are more likely to learn from what is entertaining. Walt Disney himself recognized this years ago, when he commented: "We have long held that the normal gap between what is generally regarded as 'entertainment' and what is defined as 'educational' represents an old and untenable viewpoint."

Educational experts agree. One need only examine modern educational theory to see that lectures and rote memorization have long since been replaced by teaching methods designed to entertain as well as educate. Today's students, for example, learn about physics from teachers that spin around like figure skaters. They learn math and hone their reading skills from computer games.

In short, children learn best when learning is fun. And what is true in the classroom is equally true on the television screen. Educational programs such as *Sesame Street* are successful because they both entertain *and* educate. Children watch *Sesame Street* because they have fun with their friends Big Bird and Cookie Monster. And, in the process of watching, they learn.

The problem that Congress has recently identified, and that the Commission now seeks to address, is *not* that some educational programs also are entertaining. Rather, the problem is that some broadcasters evidently are attempting to avoid their educational programming obligation by designating purely entertainment programs (*e.g.*, *The Flintstones*) as educational.

The Commission, quite properly, now seeks to redress this problem. In doing so, however, it must be careful not to lose sight of the goal of the Children's Television Act of 1990 -- educating children and encouraging them to learn. The Commission's proposal to require that *the primary* purpose of a program be educational, with the entertainment value relegated to secondary status, will unwittingly frustrate that goal. By requiring broadcasters to undertake the difficult task of ranking the educational and entertainment values of programs, the Commission will create an incentive for broadcasters to air programs that are more pedantic and less entertaining. The proposal is thus directly at odds with current educational theory that teaches that children learn best when they are having fun. More significantly, children will not watch -- and consequently will not learn from -- these programs.

In order to ensure that broadcasters meet their educational programming obligation without discouraging programs such as *Sesame Street* that both entertain and educate, the Commission should permit broadcasters to rely on a program if they make a reasonable, good faith judgment that *a significant* (as opposed to *the primary*) purpose of the program is educational. This approach will encourage broadcasters to air programs that are at least as entertaining as they are educational. At the same time, because it would be unreasonable for broadcasters to conclude that a significant purpose of a purely entertainment program like

GI Joe is educational, it will prevent broadcasters from avoiding their educational programming obligation. In short, such an approach will further rather than frustrate Congress' goal in enacting the Act.

Commissioner Duggan recently expressed his hope for "a vigorous, voluntary response from broadcasters and program producers" in providing more educational programming. Disney is a producer that stands ready and willing to produce educational children's programming. All we ask is that the Commission not create a regulatory regime that stifles our ability to do what we do best -- create and produce quality children's programming that will teach children by engaging them in an entertaining manner.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|-----------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Policies and Rules Concerning |) | MM Docket No. 93-48 |
| Children's Television Programming |) | |
| |) | |
| Revision of Programming Policies |) | |
| for Television Broadcast Stations |) | |

To: The Commission

**COMMENTS OF
THE WALT DISNEY COMPANY**

The Walt Disney Company ("Disney"), by its attorneys, submits these comments in response to the Commission's Notice of Inquiry in the above-captioned proceeding.

INTRODUCTION

In enacting the Children's Television Act of 1990, 47 U.S.C. § 303a and § 303b (the "Act"), Congress required broadcasters to air programs that meet the informational and educational needs of children. Television, Congress stated, is particularly well-suited to help teach children "while entertaining them and exciting their curiosity to learn."¹

Congress thus recognized the fundamental precept upon which today's educational system is based: Children learn best when they are engaged -- *i.e.*, when learning is fun.

¹ 47 U.S.C. § 303a (Supp. II 1990).

What is true in the classroom is equally true on the television screen. Simply put, children will watch programming only if it engages them in an entertaining manner. And they obviously cannot learn from programming they do not watch.

The Commission threatens to frustrate the very purpose of the Act -- educating our children -- by proposing to recognize only those educational programs whose entertainment value is relegated to secondary status. Far from discouraging the entertainment value of this kind of programming, the Commission should be encouraging educational programming that is also entertaining.

The Commission's proposal also risks stifling the creative freedom of broadcasters and producers. Disney is a producer that prides itself on understanding children. Disney's success in producing children's movies and television programs is premised on the same principle that Congress recognized in adopting the Act -- children will watch quality programs that are entertaining, not those that are pedantic and dull.

When Disney entered the first-run children's programming market in 1987, it changed the face of children's entertainment programming. Prior to 1987, there was a dearth of quality children's programming. Children's programs were predominantly based on toys that appealed to either boys or girls (but not both), had unsophisticated story lines, and lacked fully developed characters. Applying its bedrock philosophy to television programming, Disney created a different kind of children's programs -- quality programs that were character/story-based, appealed to both boys and girls, and had well-rounded story lines that featured fully developed characters.

Children reacted positively, with the new Disney programs gaining unprecedented viewership.² Other producers followed Disney's lead, and children's programming soon shifted from toy-based to higher quality, character/story-based programs. Children are, in fact, a discerning audience that will gravitate to quality programs.

The status of the market today with respect to children's educational programming is not unlike the market for children's entertainment programming before 1987. Few resources are devoted to the production of educational programming, which has to date largely been seen as uninteresting and therefore unlikely to attract many viewers. As a result, there is a dearth of quality educational programming currently available.

Disney is convinced, however, that children will watch educational programming if it is high quality and engaging in an entertaining manner. Disney is committed, therefore, to producing television programs that meet the educational and informational needs of children. But we will not compromise Disney's longstanding emphasis on quality programming that will attract children and hold their attention, by entertaining as well as educating them. In short, we will not spend our time and resources to produce programs that children will not watch.³

For these reasons, Disney urges the Commission not to adopt its proposal to require that in order for programming to qualify as educational and informational, its primary purpose must be to educate, with entertainment only a secondary purpose. Instead, so long as a

² A more detailed discussion of Disney's experience in producing children's television programs can be found in our Comments filed in Docket No. 90-570 (January 30, 1991) ("Disney Comments").

³ The cost of producing quality children's programs is substantial. When Disney entered the children's entertainment programming market in 1987, our programs' budgets were double those of typical children's programs. The educational programs Disney is producing for the 1993 fall season will require Disney to risk many millions of dollars. Taking such a risk will be problematic if we are constrained by a regulatory climate that makes it less likely that children will watch these programs.

broadcaster makes a reasonable, good faith judgment that education is *a significant* (as opposed to *the primary*) goal of a program, the program should be considered educational.

I. ENTERTAINMENT IS A CRITICAL COMPONENT OF THE EDUCATIONAL PROCESS

The goal of the Act is to educate children -- the same goal of our educational system. The Commission need only consider how educational theory has evolved over the years to realize the importance of entertainment in the educational process.

Gone are the days when students had the "three R's" drummed into them by teachers standing at a blackboard. Educators have long since realized that rote memorization as a teaching method is not particularly successful, nor does it lead to long term understanding. Modern educational theory teaches that children learn best when learning is interesting and fun, so that children become engaged.⁴ Research demonstrates that "being entertaining is strongly associated positively with teacher effectiveness."⁵ Based on this research, three noted educational scholars conclude that:

[b]ecause students are best motivated by interesting topics taught in interesting ways by interesting instructors . . . educators would do well to embrace entertainment as a friend, not a foe, of effective instruction. When understood as a valuable mediation process for joining together our students and our subject matter, entertainment becomes an educational tool we *can* live with and *can't* live without.⁶

4 Indeed, our own experiences validate this theory: Most of us remember the one teacher who made Shakespeare or physics or geography come alive by innovative teaching methods that captured our attention.

5 Russel F. Proctor II *et al.*, *Entertainment in the Classroom: Captivating Students Without Sacrificing Standards*, Educational Horizons, Spring 1992, at 147.

6 *Id.* at 151-52 (emphasis in original).